

He (Migration) [2018] AATA 5093 (17 September 2018)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Ms Siyi He

CASE NUMBER: 1702076

DIBP REFERENCE(S): CLF2012/215350

MEMBER: Grant Chapman

DATE: 17 September 2018

PLACE OF DECISION: Adelaide

DECISION: The Tribunal remits the application for a Partner (Residence) (Class BS) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 801 (Partner) visa:

- cl.801.221 of Schedule 2 to the Regulations

Statement made on 17 September 2018 at 5:52pm

CATCHWORDS

MIGRATION – Partner (Residence) (Class UB) – Subclass 801 (Partner) – genuine spousal relationship – validly married – representation as a married couple – married young contrary to cultural norms – parents now supportive of their relationship – provide emotional support to each other – live together with sponsor’s mother or one of her properties – no joint significant assets – decision under review remitted for reconsideration

LEGISLATION

Migration Act 1958 (Cth), ss 5CB, 5F, 65
Migration Regulations 1994 (Cth), r 1.15A Schedule 2 cl 801.221

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISIONS AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 19 January 2017 to refuse to grant the applicant a Partner (Residence) (Class BS) visa under s.65 of the *Migration Act 1958* (the Act). On 1 November 2012, the applicant had been granted a Partner (Temporary) (Class UK) (Subclass 820) visa.
2. The applicant, Ms Siyi He (the applicant) applied for the visa on 24 October 2012 on the basis of her relationship with her sponsor, Mr Zhixi Zhu (the sponsor). At that time, Class BS contained only one Subclass: Subclass 801 (Partner). The criteria for the grant of this visa are set out in part 801 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter the primary criteria include cl.801.221(2), that at the time of decision, the applicant must be the spouse or de facto partner of the sponsoring partner.
3. The delegate refused to grant the visa on the basis that the applicant did not satisfy cl.801.221 of Schedule 2 to the Regulations because insufficient information had been provided to the delegate to satisfy them that the applicant and the sponsor were in a genuine spousal relationship.
4. The applicant appeared before the Tribunal on 7 June 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor, the sponsor's mother Mrs Lu Zhao and two friends of the sponsor, Mr Kevin Samreth and Mr Jichen Wang, together with Ms Yanlu Lu, a friend of the sponsor's mother. The Tribunal Hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
5. The applicant was represented in relation to the review by her registered Migration Agent, Mr Ross McDougall, of RPM Lawyers, Willunga, South Australia.
6. Having acknowledged to the Tribunal that only a limited quantity of information and documentation had been provided originally to the Department of Immigration and Border Protection, the applicant and sponsor provided a substantial quantity of additional documentation both prior to and after the Tribunal Hearing.
7. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. The issue in the present case is whether the applicant and her sponsor are in a spousal relationship as defined by section 5F of the Act.
9. In determining the applicant's claims, the Tribunal must first make findings of fact on material matters in dispute. This may involve an assessment of credibility and in so doing, the Tribunal is aware of the need and importance of sensitivity to the circumstances and difficulties applicants may face before the Tribunal, related to their particular situation.
10. The applicant relies on written submissions and supporting evidence provided to the Tribunal and previously to the Department, together with oral evidence which the applicant, sponsor and other witnesses gave at the Hearing.

11.

12. Whether the parties are in a spouse or de facto relationship

13. Relevantly to this matter, cl.801.221(2)(c) requires that at the time of this decision, the applicant is the spouse of the 'sponsoring partner', who must be an Australian citizen or Australian permanent resident or an eligible New Zealand citizen who was specified in the related Subclass 820 visa application as the spouse or de facto partner of the applicant. In the present case the applicant claims to be the spouse of the sponsor who is an Australian permanent resident and was identified in the Subclass 820 visa application. On the evidence before it, the Tribunal is satisfied that the sponsor is the 'sponsoring partner' of the applicant.
14. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a) - (d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects, the nature of the visa applicant's and sponsor's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

Are the parties validly married?

15. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The applicant provided to the Tribunal a copy of a Commonwealth of Australia Official Certificate of Marriage, registration number [deleted] confirming her marriage with the sponsor on 14 September 2012 at 5/66-72 Hanson Road, Woodville Gardens, South Australia, according to Civil Rites, solemnised by celebrant John Quach. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spousal relationship met?

16. In forming an opinion about whether the applicant and her sponsor are in a spousal relationship, consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects, the nature of the applicant's and sponsor's household arrangements and the nature of their commitment to each other, as set out in Migration Regulation r.1.15A, which is attached to this decision.
17. In examining the documentary evidence tendered, the verbal evidence given by the applicant, sponsor and other witnesses at the Hearing and Commonwealth Statutory Declarations by the applicant and sponsor, the Tribunal has considered all aspects of the relationship.
18. The applicant lodged a valid application for a Class UK Subclass 820, Partner (Temporary) visa and Partner (Residence) (Class BS) Subclass 801 visa on 24 of October 2012, with the Subclass 820 visa being granted on 1 November 2012.

19. Documentation

20. As stated in paragraph 6 above, the Tribunal has benefited in reaching its decision from a substantial quantity of additional relevant documentation provided to it by the applicant and sponsor which was not available to the delegate. The consistency between the information

provided by all of the documents available to the Tribunal and the verbal evidence provided by the applicant, sponsor and other witnesses before the Tribunal, leads the Tribunal to accept the veracity of the evidence presented. The Tribunal found this evidence to be credible and persuasive. The Tribunal has considered all aspects of the relationship.

21. In the context of the verbal evidence provided to the Tribunal Hearing, the Tribunal has examined the following documents in considering the evidence regarding the various aspects of the relationship between the applicant and sponsor:
- 1) National Australia Bank Classic Banking bank account statements in the name of Miss S He, of [Address 1], SA, 5074, from 12 October 2011 to 10 August 2012, of [Address 2], Panorama, SA 5041, from 11 August 2012 to 11 December 2012, of [Address 3], Camden Park, SA, 5038, from 12 December 2012 to 11 February 2014 and of [Address 4], Northgate, SA, 5085 from 12 February 2014 to 11 May 2018.
 - 2) National Bank Smart Access bank account statements in the name of Miss S He of [Address 5] SA, 5032, from 23 September 2015 to 30 June 2017 and of [Address 4], Northgate, SA, 5085, from 1 July 2017 to 31 December 2017.
 - 3) National Australia Bank Classic Banking bank account statements jointly in the names of Miss He and Mr Zhu of [Address 3], Camden Park, SA, 5038 from 10 September 2012 to 11 February 2014 and of [Address 4], Northgate, SA, 5085 from 12 February 2014 to 11 April 2018.
 - 4) ANZ Bank Access Advantage cheque bank account statements in the name of Mr Z. Zhu of [Address 4], Northgate, SA, 5085 from 24 March 2014 to 24 May 2018.
 - 5) Letter from Michael Lu, banking advisor, National Australia Bank, 17 Gouger Street, Adelaide, SA 5000, dated 17 October 2012, confirming that Mr Zhixi Zhu and Miss Siyi He had a 12 month term deposit of \$5000 in their joint names maturing on 10 October 2013.
 - 6) Residential Tenancy Agreement in the names of Zhixi Zhu and Siyi He for a property at [Address 2], Panorama, 5041, for the period 15 February 2012 to 15 February 2013 signed by both parties on 8 February 2012.
 - 7) Commonwealth Statutory Declaration, dated 14 February 2018, executed by Siyi He of [Address 4], Northgate, SA, 5085.
 - 8) Commonwealth Statutory Declaration, dated 16 March 2018, executed by Zhixi Zhu of [Address 4], Northgate, SA, 5085.
 - 9) Commonwealth Statutory Declaration, dated 20 September 2017, executed by Lu Zhao, mother of the sponsor, of [Address 4], Northgate.
 - 10) DIBP Form 888, dated 8 March 2016, executed by Lu Zhao, mother of the sponsor, of [Address 4], Northgate, SA, 5085.
 - 11) Commonwealth Statutory Declaration, dated 27 November 2017, executed by Kevin Samreth, friend of the sponsor, of [Address 6], Northfield.
 - 12) DIBP Form 888, dated 13 May 2016, in the name of Kevin Samreth, friend of the sponsor, of [Address 6], Northfield, 5085.
 - 13) Commonwealth Statutory Declaration, dated 10 October 2017, executed by Yanlu Lu, friend of the sponsor's mother, of [Address 7], North Melbourne, Victoria.

- 14) Certified copy of a translation from Chinese into English of an executed statement by Xiaoyang Huang, mother of the applicant, dated 9 March 2018.
- 15) DIBP Form 888, dated 20 March 2018, in the name of Aonan Li, friend of the applicant, of [Address 8], South Plympton, SA, 5038.
- 16) DIBP Form 888, dated 15 March 2018, in the name of Dongyuan Wu, friend of the applicant, of [Address 9], Richmond, SA, 5033.
- 17) DIBP Form 888, dated 11 March 2018, in the name of Liwei Bai, friend of the sponsor, of [Address 10], Vale Park, SA, 5081.
- 18) DIBP Form 888, dated 4 May 2018, in the name of Xinyi Chen, friend of the applicant, of [Address 11], Payneham South, SA, 5070.
- 19) DIBP Form 888, dated 3 October 2012, in the name of Jichen Wang, friend of the sponsor, of [Address 2], Panorama, SA, 5041.
- 20) DIBP Form 888, dated 5 October 2012, in the name of Ka Ki Lai, friend of the sponsor, of [Address 12], Clapham, SA, 5062.
- 21) Commonwealth of Australia Official Certificate of Marriage, registration number 20165948, confirming the marriage of Siyi He with Zhixi Zhu on 14 September 2012, at 5/66–72 Hanson Road, Woodville Gardens, according to Civil Rites, solemnised by celebrant John Quach.
- 22) Copies of various certificates and medals of academic achievement in the name of Zhixi Zhu.
- 23) Motor vehicle Registration Certificate in the joint names of Zhixi Zhu and Siyi He of [Address 4], Northgate, SA, 5085, for a 2015 Suzuki sedan motor vehicle.
- 24) Certified copy of the last Will and Testament of Siyi He of [Address 4], Northgate, SA, 5085, dated 25 July 2017.
- 25) Certified copy of the last Will and Testament of Zhixi Zhu of [Address 4], Northgate, SA, 5085, dated 25 July 2017.
- 26) Copy of Statewide Super document in the name of Siyi He of [Address 4], Northgate, SA, 5085, dated 19 July 2017, confirming her binding nominated death benefit dependent to be her spouse, Zhixi Zhu.
- 27) Copy of Statewide Super document in the name of Zhixi Zhu of [Address 4], Northgate, SA, 5085, dated 19 July 2017, confirming his binding nominated death benefit dependent to be his spouse, Siyi He.
- 28) Copy of Enduring Power of Attorney, dated 25 July 2017, executed by Siyi He, of [Address 4], Northgate, SA, 5085 appointing her husband, Zhixi Zhu, of [Address 4], Northgate, SA, 5085, as her attorney.
- 29) Copy of Enduring Power of Attorney, dated 25 July 2017, executed by Zhixi Zhu, of [Address 4], Northgate, SA, 5085 appointing his wife, Siyi He, of [Address 4], Northgate, SA, 5085, as his attorney.

30) Various photographs of the applicant and sponsor, with friends and family, taken between 2014 and 2018.

31) Official Movement Record for Siyi He from 28 February 2009 to 20 October 2017.

32) Letter from Mr Ross McDougall, RPM Lawyers of Willunga, South Australia, the representative of the applicant, dated 14 September 2018, under instructions from the applicant, providing additional information regarding the residential addresses of the applicant and sponsor from 2012 to 2018.

22. *Background*

23. The applicant was born in Guangxi, China on 6 May 1992. She told the Tribunal Hearing that on the advice of a family friend, she came to Australia in 2009 to complete year 11 of high school, with English language enhancement, at Unley High School in metropolitan Adelaide and then completed year 12 in 2010 before enrolling for a Bachelor of Commerce degree at the University of Adelaide in 2011, where she met the sponsor.

24. The sponsor was born in Sichuan, China on 2 September 1992. He told the Tribunal Hearing that he came to Australia in his pre-teen years with his parents and has Australian permanent residency. He completed his secondary education at Adelaide high school and enrolled in the Civil Engineering degree course at the university of Adelaide in 2011 (paragraph 18.22 above), where he met the applicant.

25. *Financial aspects of the relationship*

26. *Joint ownership of assets:* As the sponsor is still completing his university degree studies and works only part-time and the applicant is also working only an average of 30 hours per week, earning approximately \$500 to \$600 per week, they have not established any significant assets in either their own or joint names. However, they have managed to purchase, in joint names, a late-model Suzuki motor vehicle (paragraph 18.23 above).

27. *Joint liabilities:* Between February 2012 and February 2013, the couple had the joint liability of the Tenancy Agreement when living together at Panorama. However, in more recent years they have been living in properties owned by the sponsor's mother and she has not required them to enter into formal rental agreements nor pay for the cost of any utilities. Hence, currently, the applicant and sponsor do not have any joint liabilities.

28. *Extent of pooling of financial resources:* Just prior to their marriage, in September 2012, the applicant and sponsor opened a joint bank account (paragraph 18.3 above) and in October 2012 invested \$5000 jointly in a bank term deposit for 12 months (paragraph 18.5 above). However, apart from the six-month period between November 2013 and April 2014, very few transactions were conducted through their joint account. They told the Hearing that, as they each had their own bank accounts (paragraphs 18.1, 18.2 and 18.4 above) into which money was being received, they did not see the need to use the joint account, the opening of which had been "sold" to them by bank staff as their marriage approached. They were unaware of the weight which a decision maker on the applicant's visa application would give to the operation of a joint account in assessing the nature of the relationship. However, examination of the joint account shows that since December 2016, it has been the main facility for their pooling of financial resources, with both of their salaries being paid into that account and their day-to-day living expenses being paid from it. Analysis of their individual accounts prior to that, nevertheless, shows that they were sharing living expenses and thereby pooling financial resources, albeit from those individual accounts. While they were both full-time students, their respective parents were their main source of income. However for the applicant, this became supplementary to her earnings working for "Citinails" and more

recently the combined income from “Citinails” and working for her mother-in-law, the sponsor’s mother in her travel consultancy. Similarly, in more recent years, the sponsor has been working part-time in the travel business, earning income while studying part-time.

29. *Any legal obligations owed to the other party:* The applicant and sponsor have the usual mutual legal obligations of a married couple. In addition, they have made Wills (paragraphs 18.24 and 18.25 above) and superannuation binding death benefit nominations (paragraphs 18.26 and 18.27 above), together with Enduring Powers of Attorney (paragraphs 18.28 and 18.29 above), each in favour of the other.
30. *Any sharing of day-to-day household expenses:* As discussed in paragraph 23 above, analysis of the nature of the withdrawals from the individual bank accounts of the applicant and sponsor between early 2012 and late 2016 show a number of expenditure items related to day-to-day living expenses. The Tribunal accepts that there is adequate evidence to show that these were shared living expenses. According to their evidence at the Tribunal Hearing, supported by that of family and friends in Statutory Declarations and Form 888’s (paragraphs 18.9, 18.11, 18.15 and 18.18 above), for most of the past seven years the couple have lived either with the sponsor’s mother, or in residential property owned by her, or have shared houses with friends. As a result, they were either not required to pay any of the costs for household utilities or only a proportion of them. This limited most of their living costs to items such as food, motor vehicle, clothing and entertainment but meant also that they are not in possession of any utility invoices in their own names.
31. *Financial aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence in support of the financial aspects of the relationship as being one exhibiting a mutual commitment to a shared life the exclusion of others, being a genuine and continuing relationship and that they are living together.
32. *The nature of the household*
33. *Any joint responsibility for the care and support of children:* The couple, as yet, do not have any children. They told the Tribunal Hearing that they wish to establish a sound financial base and purchase their own home before they start having children.
34. *The living arrangements of the applicant/sponsor:* As described in paragraph 25 above, the applicant and sponsor gave evidence to the Tribunal Hearing, supported by several friends, that for most of the past seven years they have lived either with the sponsor’s mother, or in a property owned by her, or have shared residences with friends. According to evidence provided, after the Tribunal Hearing, to the Tribunal, which had asked for clarification of the living arrangements of the applicant and sponsor (paragraph 18.32 above), the applicant and sponsor commenced living together in February 2012 at [Address 2], Panorama, SA, 5041, then moved to [Address 3], Camden Park, SA, 5038, from December 2012 until December 2013. At that stage, the sponsor’s mother became concerned that the living arrangements of the sponsor were diverting his attention from his studies and it was agreed that he would move back home to live with his mother at [Address 4], Northgate, SA, 5085 in January 2014. As a consequence, on return from a vacation visit to her parents in China, in February 2014, the applicant moved in with her friend, Aonan Li, living then at [Address 13], Newton, South Australia. This arrangement had the desired affect, with the sponsor excelling at his studies and his mother allowed him to move out of her home and resume living with the applicant from May 2015, this time at [Address 14] Magill, South Australia. However, during this 16 month period when the applicant and sponsor were living at separate addresses during the week, the sponsor’s mother allowed them to spend weekends together at her home (paragraph 18.15 above). In August 2015, together they moved to a residence owned by the sponsor’s mother at [Address 5], South Australia. The applicant and sponsor told the Tribunal that, in January 2016, the sponsor’s sister moved out of the family home at

Northgate, so they moved from Brooklyn Park back to Northgate to live with the sponsor's mother, where they have continued to live together until the present time. The above residential addresses reflect addresses shown on the couple's various bank accounts (paragraphs 18.1 to 18.4 above), although the timeframes not exactly coincide. The applicant and sponsor told the Tribunal that they had failed to be diligent in advising the banks immediately of the changes of address. The Tribunal accepts the veracity of this explanation.

35. *Any sharing of responsibility for housework:* The applicant and sponsor told the Tribunal that they share house work responsibilities according to who is free at the time. However, generally, the applicant does most of the shopping for food and meal preparation, while the sponsor cleans up after meals and washes up. The applicant does the washing and the sponsor hangs the washing out to dry. Also, he does the cleaning and puts out the rubbish. The Tribunal accepts that this is the case.
36. *Household aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the household as being one which demonstrates the relationship between the applicant and sponsor as being a mutual commitment to a shared life to the exclusion of others, being a genuine and continuing relationship and that they are living together.

37. *The social aspects of the relationship*

38. *Whether the persons represent themselves to other people as being married to each other:* The applicant and sponsor told the Tribunal Hearing that in the early years of their marriage, while it was generally known among both friends and family that they were in a relationship, they did not want either the applicant's or the sponsor's family to know they were married. They knew that the parents would disapprove of them marrying at such a young age. They were mindful that in China the legal age for marriage is 22 and to be married at a younger age would be contrary to the cultural norms accepted by their parents. Hence, only a very few close friends were made aware of their marriage in the first few years. Both the applicant and sponsor told the Tribunal that the sponsor's mother was angry for a few months after she found out they were married. However, as she observed the continuing development of their relationship, she accepted their marital status. In her own evidence to the Tribunal Hearing, the sponsor's mother described her reaction as surprised and disappointed, rather than angry, when she discovered the couple had married without confiding in her. However, as she observed the nature of the relationship, she became happy about their marital status. Now, she has a very good relationship with her daughter-in-law, the applicant. The applicant's parents did not become aware of the marriage until her mother was contacted by the Department of Immigration and Border Protection regarding her visa application. The applicant said her mother was angry for a few months about the deception. However, when her mother visited the applicant in 2015 and saw the nature of her relationship with the sponsor she became happy with it. Since both the applicant's and sponsor's parents have become aware of and supportive of the marriage, the couple have openly presented themselves as a married couple. The Tribunal accepts the veracity of this evidence.
39. *The opinion of friends and acquaintances about the nature of the relationship:* As described in paragraph 31 above, the applicant and sponsor's parents are strongly supportive of the relationship, believing it to be genuine and continuing. In the case of the sponsor's mother, this was evident from the verbal evidence at the Tribunal Hearing, as well as from her Statutory Declaration and Form 888 (paragraphs 18.9 and 18.10 above). This also is the case with the applicant's mother (paragraph 18.14 above). Similarly, the evidence given at the Tribunal Hearing by Mr Kevin Samreth, Mr Jichen Wang and Ms Yanlu Lu, all of whom have known the applicant and sponsor for extended periods of time, expressed the view that the relationship was genuine and continuing. Mr Wang said the applicant and sponsor, as a

couple, “were the best he had ever known.” Mr Samreth said he “can’t imagine them without each other.” Ms Lu said the applicant and sponsor are “obviously a couple, wherever they go.” These comments reinforce the surety regarding the nature of the relationship expressed in some detail in their earlier Statutory Declarations and Forms 888 (paragraphs 18.11, 18.12, 18.13, and 18.19.above). Five other Forms 888 express similar confidence that the relationship is genuine and continuing (paragraphs 18.15, 18.16, 18.17, 18.18 and 18.20 above). The Tribunal accepts the veracity of all of these verbal and written statements.

40. *Any basis on which the persons plan and undertake joint social activities:* The applicant and sponsor told the Tribunal Hearing that with the demands of work and study, they have little time for social activities. However, they do have regular get-togethers with their close circle of friends, as well as family, at their respective homes and occasionally at restaurants or catching up for coffee. The couple have travelled to Melbourne together. They told the Tribunal Hearing that occasionally they go strawberry picking or crabbing. A photograph album provided to the Tribunal showed the applicant and sponsor, as a couple, at various social functions with friends during the period 2014 to 2018 (paragraph 18. 30 above).
41. *Social aspects conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the social aspects of the relationship between the applicant and sponsor as being one which exhibits a mutual commitment to a shared life to the exclusion of others, being a genuine and continuing relationship and that they are living together.
42. *The nature of the persons’ commitment to each other*
43. *The duration of the relationship:* The applicant and sponsor told the Tribunal Hearing that they first met at the University of Adelaide early in 2011, began dating shortly thereafter and committed to a long-term relationship with each other on 21 May 2011. As described in paragraph 28 above, the couple commenced living together in February 2012 and were married on 14 September 2012. The Tribunal finds that this demonstrates a gradual and consistent development of their relationship which reflects a genuine relationship. While the couple did not live in the same residence, at least during the weekdays, between January 2014 and May 2015, the Tribunal accepts that they spent weekends together during this period and so were not living apart on a permanent basis during that 17 month period. Therefore, the Tribunal concludes that the applicant and sponsor have been in a relationship for at least seven years, have lived together or not apart on a permanent basis for 6 ½ years and have been married for six years.
44. *The length of time during which the persons have lived together:* As described in paragraph 35 above, the Tribunal accepts that the applicant and sponsor have lived together or not separately and apart on a permanent basis, for 6 ½ years.
45. *The degree of companionship and emotional support the persons draw from each other:* The applicant informed the Tribunal (paragraph 18.7 above) that “I have no relatives in Australia and Zhixi is my only family and in him I trust.” She said that the sponsor helps her complete tasks relating to official matters, due to her imperfect English language skills. She highlighted also the progressive development of the relationship from being one where at the beginning they rarely chatted deeply but over time they opened their minds to each other and now chat deeply regularly, so that each cares more deeply about the other. Apart from their limited social activities, they spend time together at home watching television or movies in the evening. She said that she is afraid of the dark when the sponsor has late study commitments at university but relaxes when the sponsor comes home. The sponsor informed the Tribunal that because of his mother’s long working hours in her travel business, family communication and emotional support was fading away when he was younger. However, when the applicant came into his life, she encouraged him to show more care for

loved ones and she is the one which brings him together with his family by organising family dinners. He acknowledged having a bad temper, which the applicant is able to control with her calm approach to issues. He also described how they complement each other with regard to their respective weaknesses. He gave as an example that he has a short memory span, forgetting details and being focused on what is ahead, whereas the applicant remembers the details of various important dates. The sponsor claimed also that he assists the applicant with her current English language shortcomings (paragraph 18.8 above).

46. *Whether the persons see the relationship as a long-term one:* The Tribunal asked the applicant and sponsor, separately, about their plans for the future. The responses indicated that they had discussed and agreed on these, including for the sponsor to proceed to a Master's degree in Engineering when he completes his current Honours degree, while the applicant continues to work. They plan also to wait for several years before having children, so they can become better established, financially. For the benefit of their families, having undertaken a civil marriage without ceremony, they intend to have Chinese wedding ceremonies in both Australia and China, reflecting Chinese culture. They intend to purchase their own home. They have established wills, binding death benefit nominations for their superannuation and enduring Powers of Attorney for each other. Given that the couple have been together already for the medium term of seven years, the Tribunal concludes that each of the circumstances above are strong indicators of intent of a long-term relationship on the part of the applicant and sponsor.
47. *Commitment conclusion:* The Tribunal places substantial weight on the cumulative evidence presented regarding the nature of the persons' commitment to each other as being one where the relationship between the applicant and sponsor exhibits a mutual commitment to a shared life to the exclusion of others, being a genuine and continuing relationship and that they are living together, or not apart on a permanent basis.
48. *Summary*
49. In summary, the Tribunal concludes that at the time of visa application and at the time of this decision, the applicant and sponsor have demonstrated financial interdependence including sharing of living expenses. They are living together and sharing household duties. They present socially as a married couple and are accepted by family and friends as such. They have been in a committed relationship for seven years and married for six years. They provide companionship and emotional support for each other and have demonstrated to the Tribunal continuing plans for their future together.
50. *Any other relevant considerations*
51. While the Tribunal has determined that there are no other relevant considerations, both the applicant and sponsor provided detailed Commonwealth Statutory Declarations (paragraphs 18.7 and 18.8 above). The Tribunal accepts the veracity of the statements contained in these declarations and has referred to some of the statements therein in its consideration of claims and evidence in the paragraphs above. If further detail of claims which the Tribunal has accepted in making this decision is required during the process of remittal consideration of the visa application, the Tribunal recommends reference to these two documents.
52. *Overall conclusion*
53. For the above reasons, having carefully considered each of the prescribed factors under s.5F(2)(a-d), the Tribunal is satisfied that, at the time of visa application and at the time of this decision, the visa applicant and the sponsor were in a genuine and continuing relationship and had a mutual commitment to a shared life together to the exclusion of others and live together, or not separately or apart on a permanent basis.

54. Given these findings, the Tribunal is satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of this decision.
55. Therefore, the applicant meets cl.801.221(2)(c).
56. Consequently, the applicant meets cl.801.221.
57. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a subclass 801 visa.

DECISION

58. The Tribunal remits the application for a Partner (Residence) (Class BS) visa for reconsideration, with the direction that the applicant meets the following criteria for a subclass 801 (Partner) visa:
 - cl.801.221 of Schedule 2 to the Regulations

Grant Chapman
Senior Member

attachment - extract from migration regulations 1994

1.15a spouse

- (1) for subsection 5f (3) of the act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5f (2) (a), (b), (c) and (d) of the act exist.
- (2) if the minister is considering an application for:
 - (a) a partner (migrant) (class bc) visa; or
 - (b) a partner (provisional) (class uf) visa; or
 - (c) a partner (residence) (class bs) visa; or
 - (d) a partner (temporary) (class uk) visa;the minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) the matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) if the minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the minister may consider any of the circumstances mentioned in subregulation (3).